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Words from Waterside Mall: 1989, A Year of Change for EPA (Environmental Protection Agency)

(U.S.) Environmental Protection Agency, Washington, DC

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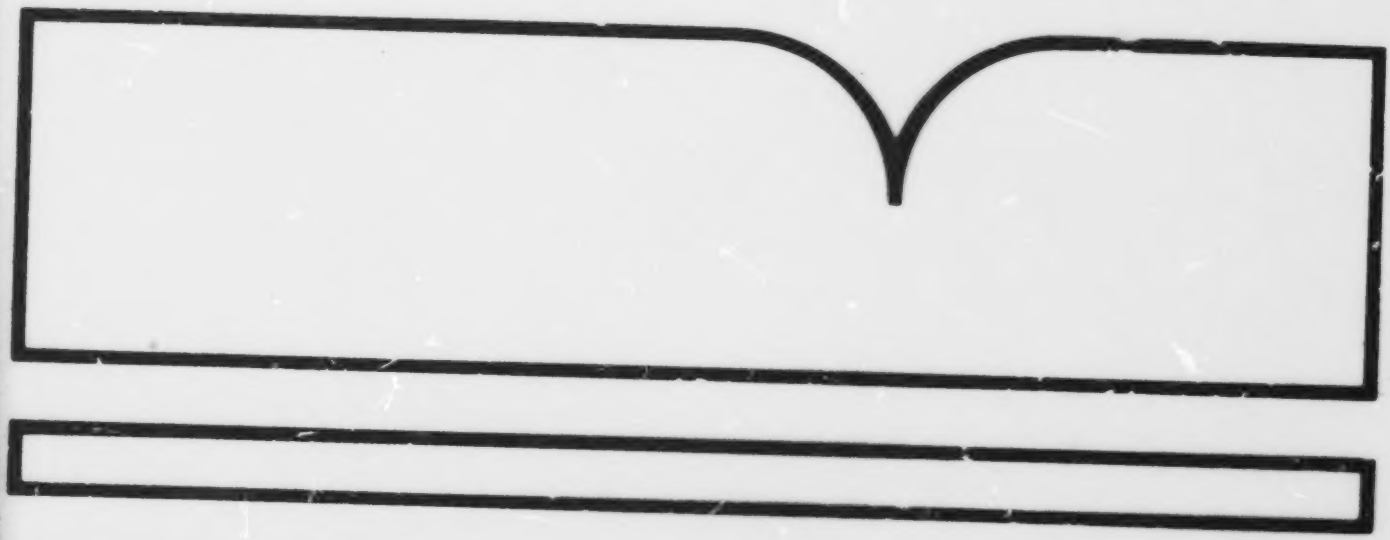

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The year 1989 will be a year of change for EPA. There is a change of Administration, a change of political appointees at EPA, and new leadership in Congress--all combining to affect the direction of EPA over the next few years. All of this is occurring as a natural consequence of our governmental system, but it is worthwhile to focus on what this political evolution means for environmental regulation and for EPA.

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WORDS FROM WATERSIDE MALL:
1989, A YEAR OF CHANGE FOR EPA

ALAN M. EHRLICH

Written for
ENVIRONMENTAL VOICE
The Newsletter of the National Law Center's
Environmental Law Association

March 31, 1989

Alan Ehrlich, a night student at the NLC, works for the U.S. EPA's Office of Health and Environmental Assessment. However, the views expressed in this article are solely Alan's and do not necessarily reflect the views or policies of his office or of EPA.

The year 1989 will, as a matter of course, be a year of change for EPA. There is a change of Administration, a change of political appointees at EPA, and new leadership in Congress--all combining to affect the direction of EPA over the next few years. It is not that any of this is unexpected. All of it is occurring as a natural consequence of our governmental system, but it is worthwhile to focus for a few moments on what this political evolution means for environmental regulation and for EPA.

First, the effects of a change of Administration. During his campaign, State of the Union message, and budget message, President Bush made a commitment to the environment making it a top domestic priority. He resubmitted former President Reagan's budget request of $3.7 billion for EPA operations and trust funds which is a 9% increase over the current fiscal year; however, with the previously planned drop in construction grants the overall budget decreases by 8% to $4.9 billion. President Bush also recommended modest increases in clean coal technology research (Department of Energy) and wilderness preservation (Department of Interior). These figures continue the trend of the last several years--environmental issues faring better than other domestic issues.

More important, and as yet unclear, is the tone that will be set. Will the Administration provide leadership? Will the Administration give EPA greater freedom in pursuing regulatory strategies? Will OMB continue to delay or request watering down of EPA draft regulations? The evidence is mixed. The President has taken several significant initiatives. For instance, on the heels of the successful international negotiations to reduce chlorofluorocarbon (CFC) use, the Administration has advocated negotiations for further phasedown if not outright elimination. On the other hand, none of the new White House advisers have any record of environmental advocacy. Counsel Gray was Counsel to then Vice-

President Bush's Task Force on Regulatory Reform which, in the early 1980's, advocated a go-slow approach on issues like the phasedown of lead in gasoline. Chief of Staff Sununu, as governor of New Hampshire, supported nuclear power in general and the Seabrook, New Hampshire plant; those are negatives on many environmentalists' score cards (though not all--perhaps an item for a future column). OMB Director Darman's views on the environment, in general, and the role of OMB in regulatory review are unknown. Federal court appointments could ultimately influence decisions on access to the courts by environmental advocacy groups or through citizens' suits.

Then there is EPA, itself. The new Administrator, William K. Reilly, has been called the first environmental professional to head the Agency. That may not be strictly true--for instance, Russell Train was and is an environmental professional--but as former President of the Conservation Foundation, Reilly is certainly well known as an advocate for environmental programs and is clearly conversant with the issues. I need not dwell on his views--those appear elsewhere in this issue. Mr. Reilly's first big challenge, however, is simply one of getting EPA organized. As of this writing, only one of the other political appointee positions in the Washington Headquarters has been formally submitted to the Senate, let alone confirmed; he is William G. Rosenberg, nominee to be Assistant Administrator for Air and Radiation. There is currently only one holdover, John Moore, and he is not serving in his appointed position as Assistant Administrator for Pesticides and Toxic Substances, but rather as acting Deputy Administrator. In EPA, the Assistant Administrators have substantial responsibility for developing and advocating regulatory programs under the general direction of the Administrator, and all of those positions are now occupied on an acting basis by top-level career employees, though in a few

cases, like Mr. Rosenberg, the political appointees are known and are acting as "consultants." The situation is different in the 10 regional offices. Though the Regional Administrators are also political appointees subject to senatorial confirmation, many of the holdovers are still in place.

To be sure, this kind of slow transition happens every time an Administration changes; for example, in the last Administration, there was no confirmed Assistant Administrator for Research and Development until 1983, and he was appointed and confirmed during the wave of replacements in the changeover from Anne Gorsuch Burford to William Ruckelshaus. However, these slow transitions do impede organizational changes, policy changes, and development of new initiatives. Perhaps one advantage to making EPA a cabinet level agency would be greater speed in these transitions--but there has been much public criticism of the slow speed of the appointment process throughout the Administration.

Frequently, new Administrators have made organizational as well as personnel changes, because organizational issues can affect policies. As I stated previously EPA is a highly decentralized organization. As one example, decentralization may have had a significant effect on EPA's most recent public notoriety--Alar (daminozide), the preservative used on apples. Part of the "special review" process for pesticides (the process by which previously granted registrations are cancelled) is review of the scientific issues by a Congressionally mandated independent advisory group, the Scientific Advisory Panel. It was this panel which, a few years ago, recommended further study on daminozide before making a decision, in contrast to EPA staff recommendations. This panel is administered under the auspices of the Assistant Administrator for Pesticides and Toxic Substances, which means it is not directly answerable to the

Administrator. Most other advisory committees, including a Congressionally mandated one under the Clean Air Act, are administered out of the Office of the Administrator by the Science Advisory Board. There have been issues in which Pesticides' Scientific Advisory Panel and the Administrator's Science Advisory Board have disagreed. Though every attempt is made to create advisory boards that are truly expert and independent and balanced both by scientific discipline and environmental perspective, the managing organization does influence the nomination and selection process. It is conceivable that a pesticides panel organized as a function of the Board might have made a different decision a few years ago, leading, arguably, to cancellation of the registration prior to the recent controversy.

Last, but not least, there is Congress. There the biggest personnel change of environmental interest is the election of Senator George Mitchell as majority leader. In his former position, Chairman of the Senate's Subcommittee on Environmental Protection, he had been a proponent of specific, prescriptive, stringent amendments to the Clean Air Act--affecting issues like acid rain, global climate, and air toxics. Unfortunately, Senator Mitchell and Senator Byrd, (former majority leader) could not agree on the issues and there was no Senate action in the last Congress. With Senator Mitchell as the new majority leader, Senate action is now more likely. The House personnel are the same. Henry Waxman, Chair of the Subcommittee on Health and the Environment, and John Dingell, Chair of the parent Committee on Energy and Commerce, have previously disagreed on approaches and they are still in the same leadership positions. However, Congressman Dingell has already introduced a bill on air toxics and has expressed a commitment to action on environmental issues.

There are other holdover issues for the 101st Congress. Congress has been, and is interested in, amending the Resource Conservation and Recovery Act, especially with respect to municipal waste. The 100th Congress came close to passing a bill on ground-water protection. Hearings were held in 1988 on the Ashland Oil tank spill into the Monongahela River; the recent spill from the tanker Valdez could lead to a reawakened interest in legislation.

Another sleeper is "pollution prevention" or "waste minimization." Communities are becoming concerned about the growing garbage crisis, and EPA has issued a policy statement calling for reduction of pollution in production and distribution processes, more recycling, and more development of and use of treatment techniques that will minimize the bulk of disposed wastes. Much of the action on municipal waste will be local. For instance, many communities, including D.C. and Montgomery County, have passed or are considering mandatory recycling bills. Whatever the focus, and how much of the action is national in scope, is not clear, but the issue will definitely not go away any more than will the garbage.

Other issues came to the public forefront in 1988 and could lead to legislation in the 101st Congress. Global climate (perhaps part of the Clean Air Act revisions), nuclear waste disposal, medical waste legislation (in addition to that passed in the 100th Congress), and wetlands preservation are also now becoming significant parts of the public concern and could influence Congress' agenda, if not results over the next two years.

I said a year ago that 1988 would be an interesting year--so will 1989.